

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

BETTA PRODUCTS, INC., a California
Corporation,

Debtor.

No. C 05-02273 CRB

Bankruptcy Case No. 03-10925 AJ

ORDER

BETTA PRODUCTS, INC., et al.,

Plaintiffs,

v.

TRANSGLOBAL COMMUNICATIONS, et
al.,

Defendants.

This adversary proceeding was withdrawn from bankruptcy court. The debtor, Betta Products, Inc. (“Betta”), alleges that defendants misappropriated Betta’s trade secrets. Now pending before the Court are defendants’ motions to dismiss and to strike. After carefully reviewing the papers filed by the parties, the Court concludes that oral argument is unnecessary, see Local Rule 7-1(b), and rules as is set forth below.

1. Defendants’ motion to dismiss the misappropriation of trade secrets claims on the grounds that plaintiff has not and cannot allege ownership of trade secrets is DENIED.

1 Paragraphs 15 and 16 of the complaint sufficiently allege ownership. Moreover, defendants
2 have not established that Betta is barred by judicial estoppel from asserting ownership of
3 trade secrets.

4 2. Defendants' motion to dismiss Betta's common law misappropriation of trade
5 secrets claim is GRANTED with prejudice. While Accuimage Diagnostics Corp. v.
6 Terarecon, Inc., 260 F.Supp.2d 941, 952-54 (N.D. Cal. 2003) is *not* binding precedent, as
7 erroneously asserted by defendants, the Court finds the reasoning of Accuimage and Digital
8 Envoy, Inc. v. Google, Inc., 370 F.Supp.2d 1025 (N.D. Cal. 2005) persuasive.

9 3. Defendants' motion to dismiss Betta's claim for intentional interference with
10 prospective economic advantage is GRANTED with leave to amend.

11 4. Defendants' motion to dismiss Betta's Seventh Cause of Action for conspiracy
12 is GRANTED with leave to amend. Betta concedes that conspiracy is not a separate cause of
13 action; rather, it asserts that it is an alternative basis for liability under the previously-pled
14 causes of action. Accordingly, Betta shall amend its causes of action to include the
15 alternative conspiracy allegation where appropriate.


16 5. Defendants' motion to dismiss plaintiff McCurnin for lack of standing is
17 GRANTED as unopposed.

18 6. Defendants' motion to strike is GRANTED as all parties agree that Betta may
19 only recover restitution. However, the Court is *not* now deciding how restitution is to be
20 measured.

21 7. Betta shall file its amended complaint, if it chooses to amend, within 20 days of
22 the filing of this Order.

23 **IT IS SO ORDERED.**

24
25 Dated: September 7, 2005


26 CHARLES R. BREYER
27 UNITED STATES DISTRICT JUDGE
28

United States District Court

For the Northern District of California

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